



Legislative Research Council

FORTY-SEVENTH INTERIM REPORT DECEMBER 2003

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EXECUTIVE BOARD

The Executive Board met six times during the period January 2003 through December 2003: March 24, April 14, May 12, June 9, August 4, and November 17-18. At its organizational meeting in March, the newly elected Executive Board elected Representative Orville B. Smidt (R-Brookings) as Chair and Senator Ed Olson (R-Mitchell) as Vice Chair for 2003-2004. Members' terms are two years. At its April and May meetings, the Board established the interim program by selecting study topics and appointing study committees. The Board also assigned five issue memorandums: (1) *Consumer-Directed Health Care*; (2) *The Regulation of Vehicle, Implement, and Equipment Dealer Franchises and Dealer Agreements*; (3) *Sales Tax on Food*; (4) *The Roles of Innovation and Venture Capital in Economic Development*; and (5) *Taxation*. The other highlights of the 2003 meetings are summarized on page 2 of this report.

On October 3-5, the Executive Board, the Majority and Minority Leaders, and the Co-chairs of the Appropriations Committees met for a working retreat in Rapid City. The main topic of discussion at the gathering was the appropriations process.

The Board monitors the legislative participation in the Council of State Governments (CSG). The 2003 Midwestern Meeting was held in Milwaukee, Wisconsin, August 24-27. Topics included state-federal relations, protecting the Great Lakes, environmental challenges for the rural Midwest, state efforts to enhance K-16 education, trends in sentencing reform, and implications of TEA-21 reauthorization.

The 2004 meeting of the Midwestern Legislative Conference, scheduled for July 11-14, will be in Des Moines, Iowa.

Legislators who served on Council of State Governments committees are listed in the Appendix to the *Interim Report*.

The Midwestern Legislative Conference's annual Bowhay Institute for Legislative Leadership Development (BILLD) was held July 11-15, 2003, in Madison, Wisconsin. Senator Tom Dempster and Representatives Joni M. Cutler and Kathy Miles participated in this training program, which is designed exclusively for Midwestern legislators. The Bowhay Institute is named in honor of the late James Bowhay, the first director of the Midwestern Office of the Council of State Governments.

The CSG Annual State Trends and Leadership Forum was held in Pittsburgh, Pennsylvania, on October 23-26. At this meeting, the South Dakota Legislature was recognized for its Web site. The Center for Digital Government, a national research and advisory institute serving both government and industry, ranked the site number two in the nation, tied with Minnesota. (Nevada's site was ranked number one.) The Legislature's Web site has become the focal point of activity and information for legislators, citizens, professional lobbyists, and staff members.

In addition to the Council of State Governments, the Legislature is a member of the **National Conference of State Legislatures (NCSL)**. *Connecting America* was the theme of the 2003 NCSL Annual Meeting, which was held in San Francisco, California, July 21-25. The 2004 meeting will be held in Salt Lake City, Utah, on July 19-23.

Members of the 2003 NCSL committees can be found in the Appendix. Senator Larry Diedrich served on the NCSL Executive Committee in 2003.

The Board is responsible for appointments to several groups, including the State Investment Council, South Dakota Code Commission, and Uniform Laws Commission (ULC). At its June 9 meeting, the Board appointed Dr. Angeline Lavin of Sioux Falls to a five-year term on the Investment Council. The Board also reappointed Mr. Michael DeMersseman of Rapid City to a two-year term on the South Dakota Code Commission and to a three-year term on the Uniform Laws Commission. On August 4 Senator Dave Knudson was appointed to a three-year term on the Uniform Laws Commission.

In other action throughout the year, the Executive Board:

- Authorized payment of the Legislature's share of the 2003 dues and future dues to the Education Commission of the States.
- Awarded State Investment Officer Stephen R. Myers a bonus of \$149,043.66 for the two-year period ending June 30, 2003.
- Selected the Department of Education and the Bureau of Information and Technology for review during the 2004 interim.
- Agreed to introduce legislation in the 2004 Legislative Session to provide for compensation for legislative leaders.
- Received reports on the Division of Criminal Investigation expansion project and the Governor's residence project.
- Awarded the legislative printing contract for the 2004 Legislative Session to State Publishing Company of Pierre.

In addition, the Executive Board served as the interim Bonding Committee. The committee met on November 17 and 18 to review the operations, programs, and financial conditions of the various state authorities and agencies authorized to incur debt. The committee received the annual reports from and asked questions of the representatives of the following: the South Dakota Housing Development Authority, the South Dakota Building Authority, the South Dakota Health and Educational Facilities Authority, the South Dakota Economic Development Authority, the South Dakota Conservancy District, and the South Dakota Value Added Finance Authority.

Staff members to the Bonding Committee included: Fred Baatz, Principal Research Analyst; and Teri Retrum, Senior Legislative Secretary.

The Executive Board is responsible for the entire interim research program of the Legislative Research Council. The several committees, working within the framework of the Legislative Research Council, have submitted their summaries in this report and will submit their legislative recommendations to the 2004 Legislature.

Listing of Executive Board Members

Members: Representative Orville B. Smidt, Chair; Senator Ed Olson, Vice Chair; Senators Arnold M. Brown, Tom Dempster, H. Paul Dennert, Brock L. Greenfield, Gil Koetzle, and Royal “Mac” McCracken; and Representatives Julie Bartling, Rebekah Craddock, Phyllis M. Heineman, Claire B. Konold, Gerald Lange, Matthew Michels, and Ron Williamson.

Staff members: James A. Fry, LRC Director; Yolonda J. Soyer, Administrative Assistant; Rhonda Purkapile and Teri Retrum, Senior Legislative Secretaries; and Kris Schneider, Legislative Secretary.

APPROPRIATIONS COMMITTEE

Study Assignment

A continuing review of the appropriations process.

Summary of Interim

The Special Committee on Appropriations, in accordance with chapter 4-8A, approved additional appropriations of \$51.7 million and 75.7 FTE in FY 2003. For FY 2004, the committee approved an additional \$76.4 million and 46.7 FTE.

The committee met on June 25, 2003. The following appropriation adjustments were approved:

1. Department of Social Services: \$4,500,000 (\$1,500,000 from other funds and \$3,000,000 from federal funds), in FY 2003, for intergovernmental transfers conducted by the Division of Adult Services and Aging. This will result in an additional \$1,500,000 of revenue to be deposited in the Health Care Trust Fund.
2. Department of Health: 1.0 FTE, in FY 2003, and \$1,524,591 from federal funds and 3.0 FTE, in FY 2004. The FY 2003 request was to permit an over-utilization of FTE. The FY 2004 request is for bioterrorism hospital preparedness.
3. Department of Transportation: \$5,900,000 from federal funds which includes (A) \$1,900,000, in FY 2003, which will be used for two projects: \$1,000,000 to complete the replacement of transport buses and the reappropriation of \$900,000 for the federal Transportation Enhancement Program which will enable the Department of Game, Fish and Parks to complete improvements to recreation areas along the Missouri River and (B) \$4,000,000 of one-time federal fund expenditure authority for FY2004. The department will serve as a pass-through agency for Federal Rail Administration funds to the City of Pierre for engineering and design of a rail by-pass.
4. Department of Corrections: \$1,911,235 from all funds and 32.0 FTE which is for (A) 7.0 FTE, in FY2003, for the over-utilization of personnel in the Community Service Program and (B): in FY 2004:
 - 1.0 FTE for a building maintenance worker at the Custer Youth Corrections Center to replace the inmates who will no longer be available due to sight and sound separation requirements of the Juvenile Justice and Delinquency Prevention Act.
 - 15.0 FTE and other fund expenditure authority of \$922,865 to staff and operate the Rapid City Trusty Unit. (Secretary Reisch noted that the department will be going from 22 full time temporary employees to a total of 15 full time permanent employees.)
 - 5.0 FTE and \$176,370 in other fund expenditure authority in personal services in the Community Service Program to provide temporary supervision for agencies that are requesting inmate work crews in the Black Hills area.

- \$687,000 in federal fund expenditure authority within Administration for pass-through of Juvenile Justice and Delinquency Prevention Act funds to local units of government.
 - \$125,000 in federal fund expenditure authority within Administration for the Comprehensive Approaches to Sex Offender Management Grant that was received during FY2003 (there is no match requirement).
 - 2.0 FTE at the Custer Youth Corrections Center as a result of the Civil Rights for Institutionalized Persons Act (CRIPA) review, which required the department to add two additional classroom teachers to provide services to juveniles while in intake and disciplinary.
 - 2.0 FTE in Administration for additional staff for the Central Records Area. Secretary Reisch noted that staffing in the records area has not increased despite inmate growth from 1,733 in FY1995 to 2,996 in FY2003. This area was reviewed under a technical assistance grant through the National Institute of Corrections and they actually recommended more FTE in this area--the minimum recommendation was for 2.0 FTE.
5. Commissioner of School and Public Lands: \$125,000 from other funds which is for noxious weed control: \$65,000 in FY2003 and \$60,000 in FY2004.
 6. Secretary of State: \$235,000 from federal funds and 1.5 FTE which is for: (A) 1.5 FTE, in FY 2003, for the over-utilization of personnel and (B) \$235,000 in FY2004. Of this amount, \$135,000 is for reimbursing four county governments for the purchase of voting machines that replaced punch card voting systems. The remaining \$100,000 is for a federal grant received for accessibility improvements at election polling places.
 7. Department of Agriculture: \$1,278,020 from federal funds and 15.0 FTE, in FY 2004, for the Division of Wildland Fire Suppression. This funding will be utilized by four project areas: hazardous fuel reduction, planning and implementation of fuel management, fire-wise fire education and information, and urban interface.
 8. Department of Game, Fish and Parks: \$935,000 from federal funds, in FY 2004, to be used for: (A) the extension of boat ramps on Lake Oahe (\$635,000) and (B) implementation of a Cultural Resources Program on the Missouri River (\$300,000). This will allow the department to inventory all of the cultural resources on the land along the Missouri River that have been transferred from the U.S. Corps of Engineers to the State of South Dakota.
 9. Department of Human Services: \$718,794 from federal funds, in FY2004, to be used for: (A) the Division of Alcohol and Drug Abuse (\$220,794) and (B) the Division of Mental Health (\$498,000) for higher utilization of Title XIX Medicaid services.
 10. Unified Judicial System: \$302,600 from other funds, in FY2004, to pay the per diem and travel expenses of the Court Appointed Special Advocate (CASA) Commission (established in 2003 HB 1247) and distribute grant awards to local CASA programs throughout the state.
 11. Office of the Governor: \$10,000,000 from federal funds, in FY 2004, to be used for the

Homestake Laboratory Conversion Project. A federal grant has been received from the U.S. Housing and Urban Development (HUD) Neighborhood Initiative Grant to maintain the physical integrity of the Homestake Mine in preparation for the potential development of a major research facility on that site.

- 11a. Office of the Governor: \$770,000 (\$350,000 from federal funds and \$420,000 from the State General Fund) and 3.7 FTE, in FY 2004, for the Homestake Project Office. The target date for submission of this plan is January 5, 2004. In order to meet this deadline, a small working group will be assembled to draft the Phase One Proposal.

The planning process will include information being developed in the following five subsections: 1) science requirements; 2) experiments schedule; 3) detail costs; 4) environmental assessment; and 5) management of the facility.

The General Fund portion came from the re-allocation of money from the following sources:

- \$145,000 from the Department of Education from the technology line item as a result of lower ISP charges to the schools which are paid by the state;
 - \$110,000 from the Department of Environment and Natural Resources as a result of one-time federal funding freeing general funds;
 - \$100,000 from the Department of Commerce from savings realized from the reorganization of the department;
 - \$25,000 from the Department of Human Services available from one-time savings realized from the renegotiation of the state's food services contract;
 - \$20,000 from the Department of Revenue and Regulation (\$8,000 from office supplies, \$7,000 in excess travel funds, and \$5,000 in contractual services training);
 - \$20,000 from the Department of Labor realized from turnover of personnel and the hiring freeze.
12. Board of Regents: \$38,891,637 from all funds and 66.2 FTE, in FY 2003, for the over-utilization of funds for research.
13. Department of Education: \$50,000,000 from federal funds, in FY 2004, due to a one-time grant to the state from the federal Jobs & Growth Reconciliation Act of 2003. The Special Committee on Appropriations gave notice to the agency, via letter of intent, of its plan to introduce legislation to reduce the State General Fund appropriation by the same amount.
14. Medicaid: \$5,100,000 from federal funds, in FY 2003, and \$17,000,000 from federal funds, in FY 2004, due to a one-time grant to the state from the federal Jobs & Growth Reconciliation Act of 2003. The funds were appropriated to the following agencies:

	FY 2003	FY 2004
Department of Social Services	\$4,000,000	\$13,000,000

Department of Human Services	1,000,000	3,500,000
Department of Corrections	<u>100,000</u>	<u>500,000</u>
Total	\$5,100,000	\$17,000,000

The committee also approved letters of intent for FY 2003 and approved the distribution report for investment earnings to be distributed in FY 2003.

On December 1, 2003, the interim Appropriation Committee also approved the following items for the Department of Public Safety and the Board of Regents.

Department of Public Safety: \$4,730,536 from federal funds for the Driver's License Program, Highway Patrol, and Emergency Services Program.

- \$181,206 from federal funds for the Driver's Licensing Program. In FY03 the Driver Licensing Program received \$400,000 in federal funds to expand computerized knowledge testing. The agency spent \$273,794 (\$218,794 Federal; \$54,698 General) when they expanded the Aberdeen, Rapid City, and Sioux Falls sites and had \$181,206 left over. The Federal Motor Carrier Safety Administration allowed the remaining \$181,206 to be available this year. They plan to expand the Pierre, Mitchell, Watertown, Huron, and Brookings sites.
- \$276,330 from a federal grant that will be used to purchase automated external defibrillators for rural school districts in SD. The program started last year with the funds going to local law enforcement and emergency response teams. The agency has been told this program will run through 2006. Authority is built into the agency's FY05 budget request.
- \$638,000 from federal funds obtained by DSS from the STOP Violence Against Women Grant and awarded the Highway Patrol \$638,000 to fund the purchase of mobile data terminals (MDT's) or in car computers for 110 Highway Patrol vehicles which was approved by the US Department of Justice. The grant requires that 25% of each year's grant be used toward law enforcement in some capacity to address domestic violence. The grant funds expire June 30, 2004.
- \$3,635,000 from federal funds for emergency services. The agency requested additional federal funding due to an increase in FFY03 and FFY04 Performance Grant funds from FEMA (\$630,000). The agency also requested additional federal funding for Community Emergency Response Program. The Office of Emergency Management received new grants for Community Response Teams, Local Emergency Plans, and Citizens Corps (\$435,000). In FFY03, South Dakota received an increase in Homeland Security which resulted in a need for additional federal funding by the agency (\$2,570,000).

Board of Regents: \$500,000 from federal funds and \$1,475,000 from other funds for the following items in the Board of Regents FY2004 budget:

- Federal funds of \$500,000 and \$1,000,000 in other funds from user fees to upgrade the South Dakota Library Network (SDLN) System;
- \$397,000 from other funds for the Higher Education Facilities Fund (HEFF) to cover the additional bond issued by South Dakota Building Authority for the Lee Medicine Center replacement, South Dakota School of Mines and Technology (SDSM&T) Library remodel,

SDSM&T Mineral Industries Building A/C project, and SDSM&T Primary Electrical Distribution upgrade; and

- \$78,000 from other funds for the HEFF for increased insurance costs billed to the Board of Regents from the South Dakota Building Authority.

Listing of Legislation Adopted

None.

Summary of Meeting Dates & Places and Listing of Committee Members

The committee met on June 25 and 27. The committee conducted two tours of the state. The East River Tour, held during August 18-20, met in Aberdeen (School for the Blind, Northern State University), Huron (State Fair, Our Home, Inc.), Volga (SD Soybean Processors, Inc.), Brookings (South Dakota State University), and Sioux Falls (State Penitentiary and One-Stop Office Building). The West River Tour, held on October 7-8, met in Spearfish (Northern Hills Training Center and Black Hills State University), Rapid City (Joint Dispatch Fire Suppression Facility and Camp Rapid), and Custer (Custer Youth Corrections—Main and East Campuses, and Custer State Park).

Committee members included: Senators Jerry Apa (Co-Chair), H. Paul Dennert, Robert N. Duxbury, William F. Earley, Brock L. Greenfield, Mike Jaspers, Marguerite Kleven, William M. Napoli, and Duane Sutton (Vice-Chair); and Representatives J.E. “Jim” Putnam (Co-Chair), Stanford M. Adelstein (Vice-Chair), Julie Bartling, Quinten L. Burg, Rebekah Cradduck, Mary Glenski, Ted A. Klaudt, Orville B. Smidt, and Ron Williamson.

Staff members included: Reed Holwegner, Chief Fiscal Analyst; Mark Zickrick, Principal Fiscal Analyst; Anne Mehlhaff, Principal Fiscal Analyst; Sue Cichos, Senior Fiscal Analyst; Aaron Olson, Fiscal Analyst; and Rhonda Purkapile, Senior Legislative Secretary.

CODE COMMISSION (SOUTH DAKOTA)

Study Assignment

The Code Commission supervises the publication of the *South Dakota Codified Laws*, corrects errors to the code, assists the code counsel, makes recommendations to the Legislature, and contracts for replacement volumes.

Summary of Interim

On November 14, the Code Commission concluded its contract negotiations with West Group for the publishing of the South Dakota Codified Laws. Following extensive contract negotiations regarding language to protect the State's copyright to certain information in the Code, such as the catchlines and the case annotations, the Code Commission and West were able to agree on a contract.

Among other things, the contract protects the State's copyright interest and also protects the publisher's copyright interest in certain improvements the publisher will add to the Code to enhance the Code's usability for research. The contract will be for a term of five years, subject to annual renewal thereafter.

The Code Commission anticipates that the first edition of the "new" Code will be published before the 2004 Session. This will enable the Code Counsel and the Legislative Research Council to work out any problems or errors before the next legislative session. The 2004 pocketparts will be used to correct any problems.

The Code will have a new look and will probably expand from the 33 volumes to approximately 45 volumes.

Listing of Legislation Adopted

The Commission will propose the annual legislation to update SDCL 2-16-13, the publications constituting the official code.

An Act to correct certain references to certain departments in the executive branch as the result of the 2003 executive branch reorganization.

Summary of Meeting Dates & Places and Listing of Committee Members

The Code Commission met two times. The Commission held one meeting in conjunction with the State Bar Association on June 20, 2003, and one time at the State Capitol in Pierre on November 14, 2003, (telephone conference call).

Commission members are Michael DeMersseman (Chair), Senator Eric Bogue (Vice-Chair), Representative Matt McCaulley, Tom Lee, and Lee McCahren.

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Legislative Secretary.

CORRECTIONS AGENCY REVIEW COMMITTEE

Study Assignment

An agency review of the Department of Corrections pursuant to HB 1196, including a study comparing the criminal penalties imposed by South Dakota in relation to the criminal penalties imposed by other states as well as a comprehensive study of whether and to what extent criminal penalties currently imposed in South Dakota may be internally inappropriate or inconsistent in comparison to each other.

Summary of Interim

The committee began its work on the sunset component of its assignment by reviewing the model sunset study plan suggested by the Executive Board. The committee adopted and subsequently completed all relevant aspects of the sunset study plan in addition to several supplementary components suggested by the chair and approved by the committee. The committee also discussed and approved a course of action for the comparative sentencing portion of their study and assigned several research projects to staff for presentation at later meetings.

The bulk of the initial meeting was comprised of a detailed overview of the Department of Corrections (DOC). This was presented by Tim Reisch, Secretary, Department of Corrections, Laurie Feiler, Deputy Secretary, Michael Winder, Policy and Information Specialist, Doug Weber, Warden of the South Dakota State Penitentiary, Doug Herrmann, Director of Juvenile Services, Scott Bollinger, Director of Operations, and Kevin McLain, Coordinator of Research and Grants. The committee was interactive during the entire six-hour presentation and many questions were answered while others were deferred until additional information could be accessed. The committee regarded the agency's presentation as both comprehensive and informative.

The second meeting was held shortly after the initial meeting of Governor Rounds' Corrections Workgroup. Since the topics of discussion for the committee and the workgroup overlapped in several key areas, the committee monitored the activities of the workgroup throughout the summer. In addition, Senator Arlene Ham-Burr, Senator Garry Moore, and Representative Quinten Burg were privileged to serve on both groups and thus provide a considerable degree of continuity of effort.

During the first day of the second meeting, Secretary Reisch and key personnel of the Department of Corrections responded to areas of concern identified by the committee prior to the meeting. Especially informative was a report on inmate demographics presented by Laurie Feiler. The Department of Corrections personnel also responded to numerous ad hoc committee questions.

The committee was then hosted by Secretary Reisch at an on-site tour of the Department of Corrections administrative offices and the adjoining Women's Prison. This presented the committee, not only with an opportunity to see the facilities, but to meet, interview, and question many Department of Corrections' officials and employees. The department extended an invitation to all committee members to view any Department of Corrections facility at any time. Many committee members, either individually or in small groups, subsequently accepted this invitation and visited a number of facilities, especially the men's prison in Sioux Falls.

Later the committee broke into subcommittees to facilitate expanding the number of topics that could be addressed in detail during the allotted time. The subcommittees, their chairs, and their assignments were:

- Aftercare and Program Evaluation - Representative Casey Murschel;
- Intercultural and Minority Concerns - Senator Arlene Ham-Burr;
- Juvenile Justice - Senator Gene Abdallah;
- Parole Issues - Representative Sean O'Brien.

Subsequently the subcommittees met again during the third meeting and submitted formal reports involving recommendations and findings to the full committee. These recommendations and findings were then debated and voted on in the full committee. The finalized subcommittee reports are as follows:

Aftercare and Program Evaluation reported that the subcommittee:

- Finds that it is necessary for inmates to be productive with their time. The subcommittee further finds that there is an unmet need in programming, as evidenced by 26 percent of inmates with pending work program assignments. The subcommittee recommends that DOC expand the number and variety of work and vocational programs.
- Finds that treatment for alcohol and chemical dependency is critical for inmates. The subcommittee recommends that treatment should be available throughout incarceration with emphasis on intensive treatment just preceding release. The treatment should be cognitively-based and address antisocial thinking.
- Recommends that the programs utilized by DOC be based on best practices or undergo a program evaluation to ascertain if the desired goals are being achieved.
- Recommends that creative, community-based services, such as mentoring and half-way houses, should be encouraged for aftercare programs.
- Recommends that alternative sentencing practices be used where appropriate, especially for technical violations of parole.

Intercultural and Minority Concerns reported that the subcommittee recommends the following:

DOC, in cooperation with participating tribes, would establish and coordinate a pre- and post-release program for Native American inmates. The program would prepare the inmates for release and reintegration into the community. Creation of the program would include the following:

- Conduct an examination of the current system and current programs and conduct a formal needs assessment to determine the scope and characteristics of the proposed program.
- Establish relationships between the department and individual tribes to coordinate the creation and operation of the program and to include tribal funding for a portion of the program.
- Identify and work with contact persons from each participating tribe to design and implement the pre- and post-release program.

Juvenile Justice reported that the subcommittee recommends the following:

The Department of Corrections Agency Review Committee convey to the Governor, Department of Corrections, and the Department of Social Services its support in opening the Plankinton facility based on an agreement between the Governor and the appropriate

contracting authority for the City of Plankinton, subject to licensing by the Department of Social Services and subject to the continuing jurisdiction of the Department of Corrections over all children in the facility.

Parole Issues reported that the subcommittee recommends the following:

- That the Legislature, through the appropriations process, should provide such expenditure authority as may be necessary to the Department of Corrections to fund, through grant monies, a pilot program of intensive alcohol counseling, training, and treatment, to begin at system intake, and featuring follow-up and post-incarceration analysis to determine the effectiveness of the intensive program with regard to both sobriety and recidivism.
- That the Legislature shall examine the feasibility of a pilot program to subsidize the wages of parolees who might otherwise not be able to secure employment in the private sector at the time of initial release from the prison system.
- That the Legislature, through the appropriations process, should provide such additional funding as may be necessary to reverse the trend of ever increasing caseloads for the state's parole officers.

The second day of the second meeting was initially devoted to a long and exhaustive public hearing which was attended by about forty individuals of whom about twenty-five testified at length. Most of the testimony was highly complimentary to the Department of Corrections and emphasized programs that are widely viewed as important and effective. Criticism tended to center around the following issues:

- (1) Minority, especially Native American, cultural concerns;
- (2) Minority, especially Native American, overrepresentation in the prisons' populations;
- (3) Adequacy of dispute resolution opportunities and perceived need for a corrections ombudsman;
- (4) Perceived need for additional programs to benefit prisoners during and immediately after incarceration;
- (5) Perceived need for more and better health care and psychiatric care;
- (6) Concerns about the food service.

Considerable public testimony also centered on the efforts of the Plankinton Task Force Board to contract with Cornell Corporation to reopen the Plankinton facility as a private juvenile corrections center. Here the focus was on the nature of the State of South Dakota's commitment and oversight as well as Cornell's qualifications and the manner in which the Plankinton group had selected Cornell.

At the final meeting the committee, in addition to reviewing and debating the reports of the subcommittees referred to above, took several hours of additional public testimony, especially on electronic monitoring and the public defender system. Department of Corrections personnel made their final presentation and were subjected to a final round of committee questioning.

Much of the final day was devoted to the presentation of research conducted by the staff at the committee's request. The first of these reports sets out the mandatory minimum sentences, enhancements, and mandatory incarceration provisions in the South Dakota criminal code. The enhancements are further broken down into subsequent offense enhancements, status of offender enhancements, and status of victim enhancements.

The other report attempts to compare the penalties that may be statutorily imposed for a number of common felonies in South Dakota, the six adjoining states, and six other states. The crimes compared are manslaughter (reckless), aggravated assault, rape (common law), rape (statutory), robbery (armed), burglary (common law), arson, grand theft (\$555), intentional damage (\$555), forgery (\$555), DWI (third), and DWI (fourth). The states surveyed are Alabama, Delaware, Indiana, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, Vermont, and Wyoming. Although the exact rankings are necessarily subjective, the study concluded that South Dakota is above average in the severity of its statutory penalties for most of the felonies studied. The Deep South is the most severe; the West Coast, the most lenient. North Dakota is less severe than South Dakota in a number of important areas.

In addition to its findings and recommendations described above, the committee will be sponsoring a seventy-three section clean-up bill of the type commonly generated by sunset studies as well as a bill to provide for the establishment by the Executive Board of a Criminal Code Revision Commission composed of legislators and lawyers to revise and restructure the state's criminal penalties. The Governor's Corrections Workgroup has also expressed interest in a Criminal Code Revision Commission. The committee voted down proposed legislation that would have attached the same penalties to the rape of a child as currently apply to the crime of pedophilia.

Listing of Legislation Adopted

- An Act to revise the style and form of certain provisions relating to the Department of Corrections and to correct certain errors and omissions.
- An Act to provide for a Criminal Code Revision Commission and to declare an emergency.

Summary of Meeting Dates and Listing of Committee Members

On April 14, 2003, the Executive Board of the Legislative Research Council created the Department of Corrections Agency Review Committee. The following members of the South Dakota Legislature were appointed to the committee: Senator Lee Schoenbeck, Chair; Representative Lou Sebert, Vice-chair; Senators Gene Abdallah, Arlene Ham-Burr, Dick Kelly, Garry Moore, Bill Napoli, and John Reedy; and Representatives Quinten Burg, Richard Engels, Art Fryslie, Cooper Garnos, Tom Hennies, Casey Murschel, Sean O'Brien, Larry Rhoden, Tim Rounds, Donna Schafer, and Paul Valandra.

The committee met on June 13 in Pierre, August 13-14 in Pierre, and October 1-2 in Pierre.

Staff members were Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services; Annie Mehlhaff, Principal Fiscal Analyst; Rhonda Purkapile, Senior Legislative Secretary; and Kris Schneider, Legislative Secretary.

GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

Study Assignment

The Government Operations and Audit Committee was established by South Dakota Codified Laws (SDCL) 2-6-2. The Committee is appointed at each regular session of the Legislature. The Committee consists of ten members, five members from the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be a member of the Judiciary Committee and five members from the House appointed by the Speaker of the House, one of whom shall be a member of the Judiciary Committee.

The responsibilities of the Committee are:

- To inquire and review any phase of the operations and the fiscal affairs of any department, institution, board or agency of the state;
- To examine records and vouchers, summon witnesses, examine expenditures and the general management of departments, as deemed necessary;
- To review any findings of abuse or neglect in a juvenile corrections facility;
- To make a continuing study of the operation of the state's correctional system; and,
- To make a detailed report to the Senate and House of Representatives and submit a copy of its report to the Appropriations Committee of each House of the Legislature at the next succeeding session of the Legislature or any special session of the Legislature upon request of the body.

Committee Activity

The Committee conducted the following review and study activities during 2003:

- Reviewed audit reports.
- Reviewed General Fund contract encumbrances.
- Reviewed contracts for selected state agencies.
- Reviewed the functions of selected state offices.

Summary of Interim

Reviewed Audit Reports

The Committee reviewed the South Dakota Single Audit Report for the fiscal year ended June 30, 2002 and separately issued audit reports issued during 2003. The following summarizes the actions that were taken by the Committee.

Financial and compliance audits involve testing financial transactions of the state to determine that all money is properly accounted for and expended in accordance with state and federal laws and regulations. All audits conducted on state agencies were consolidated and reported in the Single Audit Report. The Single Audit Report includes the Comprehensive Annual Financial Report for the State of South Dakota prepared by the Bureau of Finance and

Management, a schedule showing the federal awards administered by the state and related expenditures, and audit findings and recommendations issued by the Department of Legislative Audit.

The Single Audit Report was issued in accordance with Auditing Standards Generally Accepted in the United States of America, Government Auditing Standards issued by Comptroller General of the United States and South Dakota Codified Laws. A copy of this report may be obtained from the Department of Legislative Audit.

The Committee reviewed financial reporting, internal control and compliance deficiencies written on 5 state organizations, containing 20 recommendations for corrective action. Two recommendations related to violations of state laws and regulations; eleven recommendations related to violations of federal laws and regulations; and, seven recommendations related to inadequate internal control procedures over receipts, revenue collections and expenditures and financial reporting.

The following represents the state agencies with audit findings and recommendations from fiscal years 2002 and 2001 and the implementation of fiscal year 2001 audit recommendations:

	RECOMMENDATIONS		
	<u>Fiscal Year 2002</u>	<u>Fiscal Year 2001</u>	<u>FY2001 Implemented</u>
Agriculture, Department of	0	1	1
Agriculture, Department of State Fair	0	1	1
Attorney General, Office of	0	2	2
Board of Regents			
School for the Deaf	0	6	6
Dakota State University	0	1	1
Commerce, Department of	0	1	N/A
Commerce, Department of, Licensing and Regulatory Boards & Commissions			
Electrical Commission	3	N/A*	N/A
Corrections, Department of	1	0	N/A
Education, Department of	0	1	1
Governor, Office of the	2	2	2
Health, Department of	0	2	2
Human Services, Department of	0	1	1
Internal Service Funds	0	1	1
Military and Veterans Affairs, Department of	7	0	N/A
Social Services, Department of	7	5	0

N/A* This audit is on a two-year audit cycle and did not have a FY 2001 audit.

The Committee sent letters to three state agencies with audit findings and encouraged the state agencies to implement the audit recommendations. The Committee requested a response from one state agency requesting an update on the actions taken to implement the audit recommendations. The Committee requested three state agencies with audit findings to attend the next committee meeting to discuss audit findings. The Committee requested the Department of Legislative Audit to obtain additional information on an audit finding for one state agency. The Committee continues to monitor the responses and corrective actions taken by state agencies.

Reviewed General Fund Contract Encumbrances

The Committee completed an extensive review of general fund contract encumbrances that were in effect during fiscal year 2003. The general fund contract encumbrances included thirteen fiscal year 2001 general fund budget carryovers totaling \$5,843,127.55 and forty fiscal year 2002 general fund budget carryovers totaling \$10,821,910.53. The Committee's main focus was on contract encumbrances that were not expended for a significant period of time after the date of encumbrance and encumbrances supported by contracts between two state agencies when the actual expenditures were made to private contractors. Representatives from the Bureau of Information and Telecommunications, Department of Agriculture, Department of Education and Department of Human Services provided testimony to the Committee relating to specific contract encumbrances.

The Committee also reviewed general fund contract carryovers that are in effect during fiscal year 2004. The general fund contract encumbrances include four fiscal year 2002 general fund budget carryovers totaling \$2,522,363.09 and sixteen general fund budget carryovers from fiscal years 2003 totaling \$15,056,159.07.

Reviewed Contracts for Selected State Agencies

The Committee heard testimony from the Bureau of Information and Telecommunications, Department of Corrections, Department of Social Services and Department of Education regarding consulting with total contract amounts exceeding \$100,000. The Committee also heard testimony from the Bureau of Administration, Bureau of Information and Telecommunications, Department of Corrections and Department of Social Services regarding lease space contracts. The review covered 80 consulting contracts and 160 space lease contracts.

The Committee discussion focused on the number of consulting contracts with out-of-state consultants and whether there were qualified consultants in-state that could provide services. A second issue addressed by the Committee was the lack of competition in the process for awarding contracts.

The Bureau of Administration presented the Committee with an overview of the new Office of Procurement Management. This office is planning to review consulting contracts and create a database of vendors based on services they can provide. This would provide a list of vendors with specific skills and expertise that state agencies could use to obtain quotes for specific services.

The Committee believes the state should introduce some level of competition into the process of awarding consulting services contracts. This competition could be in the form of companies submitting proposals and the selection of the contractor without requiring a formal bidding process. The Committee does believe that competition is essential in ensuring that the State receives good value for its dollar.

The Committee recommended to the Commissioner of the Bureau of Administration that his agency coordinate with other state departments such as Transportation and Game, Fish and Parks to ensure that office space in the various cities of the State is leased in the most economical and effective way possible.

Reviewed the Functions of Selected State Offices

STATE AUDITOR'S OFFICE

The State Auditor provided the Committee with background on his responsibility relating to maintaining a file of all consulting contracts. The State Auditor stated that there was a lack of consistency of information in consulting contracts documenting the basis for payment. The State Auditor's office is developing standardized contract requirements to ensure consistency and completeness of consulting contract terms.

STATE COMPTROLLER

The State Comptroller provided the Committee with an overview of his functions and projects he is working on. The State Comptroller's office has reviewed food service and legal consulting contracts. Some legal consulting contracts have been consolidated where multiple contracts required the same legal expertise. Other projects being reviewed are possible competition in awarding consulting contracts and reviewing contracts to determine if it would be more beneficial for state employees to perform certain services with rather than contracting for services.

Ongoing Activities

The Committee intends to continue to monitor and follow-up on issues it has identified concerning consulting contracts, space management leases and the role of the State Auditor in the accounting system and contracting processes of the state.

Juvenile Corrections, Legislative Research Council

The Committee heard testimony from John Ellis, the Juvenile Corrections Monitor (JCM), a position created by SB141 in the 2000 Legislative session. He presented his semi-annual report detailing the complaints received at the state owned juvenile corrections facilities. The JCM must immediately notify the Governor, Department of Corrections Secretary, and the Government Operations and Audit Committee in writing of any substantiated abuse or neglect. From January 1 through June 30, 2003, the JCM received 145 complaints from students, parents, and other interested parties. Of the 145 complaints, only five resulted in a full investigative report. The monitor could not substantiate either abuse or neglect in any of the five cases.

Listing of Legislation Adopted

None.

Summary of Meeting Date and Places and Listing of Committee Members

The Committee met on June 24, 2003, July 30, 2003, and September 9, 2003, in LCR 1 and 2 in the State Capitol in Pierre. The Committee also held a conference call meeting on October 15, 2003.

Committee members were: Representative Ted A. Klaudt, Chair; Senator Marguerite Kleven, Vice Chair; Senators Arnold M. Brown, J.P. Duniphan, John Koskan, and Garry A. Moore; and

Representatives Rebekah Craddock, Margaret V. Gillespie, Claire B. Konold, and Gerald Lange.

Staff members from Legislative Audit were Marty Guindon, Auditor General; Rich Hornak, Audit Manager; and Gary Hoscheid, Audit Manager. Staff member from Legislative Research Council was Annie Mehlhaff.

PROPERTY TAX EXEMPTIONS COMMITTEE

Study Assignment

A study of the property tax exemptions provided to nonprofit organizations and the criteria required to receive such property tax exemptions, including a study of budget limitations and optioning out of those limitations.

Summary of Interim

During the first meeting on June 10, Mr. Paul Kinsman, Director of the Division of Property and Special Taxes, provided an overview of property tax exemptions by outlining various provisions in statute. Mr. David Wiest from the Attorney General's office provided a synopsis of several Supreme Court cases concerning tax exempt property. The committee also heard from Mr. Dick Howard, Executive Director of the Association of County Commissioners, and several other county officials on the administration of tax exempt property and the burden placed on the local governments. The Department of Revenue also addressed property tax limitations and the opt out procedure.

The interim committee held its second meeting on September 15 and 16. On the first day, the committee was divided into three subcommittees. The subcommittees met in Aberdeen, Rapid City, and Sioux Falls for the purpose of making site visits to tax exempt and taxable properties and to provide local officials an opportunity to give testimony on tax exempt property and budget limitations. Each subcommittee visited five to ten properties and received testimony from local officials and individuals.

On the second day, the full committee met in Pierre and heard reports from each subcommittee. Mr. Marty Guindon, the Auditor General from Legislative Audit, provided charts and information concerning the governmental funds revenue summary for the state, counties, municipalities, schools, and townships. Mr. Michael Kenyon, the Director of the Division of Property and Special Taxes, discussed opt outs, tax limitations, and property tax exemptions. The committee heard testimony requesting that the Legislature level the playing field and that the rules not be changed for nonprofits because many nonprofits have made substantial infrastructure investments based on the existing statutes. The committee also received additional information distinguishing the differences between assisted living facilities and congregate housing. They also heard testimony from county officials outlining the financial issues facing several counties concerning budget limitations and cash flow issues.

During the final meeting on October 15, Mr. Chris Nelson, Secretary of State, explained to the committee that statute defines a nonprofit corporation as a nonprofit corporation subject to the provisions of chapters 47-22 to 47-28, inclusive, except a foreign corporation. Mr. Nelson said that there is no language in these chapters requiring a corporation to have an IRS classification as an exempt organization pursuant to 501(c). There are 1,446 nonprofit churches in the state and approximately 6,600 other nonprofit corporations. He said that the Office of the Secretary of State primarily acts as a filing agency in regard to nonprofits.

Mr. Stan Wiatros, an Internal Revenue Agent, visited with the committee about 501(c) corporations. Mr. Wiatros explained the application process in order for corporations to receive 501(c) nonprofit status. Applications must be submitted within fifteen months from the day of the inception of the corporation; however, extensions may be granted. He said that

there is information available on these nonprofit corporations on the Internet at **www.guidestar.org**.

Mr. Mike Vogel, Department of Social Services (DSS), gave an overview on how persons residing in assisted living and nursing home facilities may qualify for Medicaid assistance. Assisted living facilities provide an alternative to nursing homes, which saves money for both the family and the taxpayer. Mr. Vogel listed the following as the Medicaid eligibility requirements for an individual staying in an assisted living facility:

- Person must be at least sixty-five years of age or disabled;
- Person must have medical needs that require a certain level of care to be provided;
- Person must be a resident of South Dakota and a citizen of the United States;
- Person's monthly income limit is \$1,656, which is 300 percent of the Social Security Standard Benefit Amount; and
- Person's resource limit is \$2,000, which includes savings and checking accounts and certificates of deposit.

The committee reviewed ten legislative proposals and approved four. The committee reviewed draft legislation revising the definition of congregate housing for property tax exemptions, reporting requirements for nonprofit organizations, budget limitations, and tax incremental financing districts.

Listing of Legislation Adopted

1. An Act to revise the criteria for congregate housing to be exempt from property taxation.

This legislation sets the definition and exemption for congregate housing in a separate section. It also provides additional thresholds for congregate housing facilities to meet for a property tax exemption. Existing facilities were grandfathered in under the current threshold qualifications.

2. An Act to revise the reporting requirements for domestic nonprofit corporations.

This legislation deletes certain financial data from the annual reports. The financial data that is currently reported is not provided in a useful format.

3. An Act to revise the time frame for measuring the unobligated general fund balance of each county.

This legislation changes the dates for measuring the unobligated general fund balance for counties from December 31 to March 31 and September 30.

4. An Act to limit tax increment financing to the governing body approving the formation of the tax incremental district.

The legislation changes the amount of tax levying capacity that may be used to leverage the bonds for the TIF district. Only the entity that actually approves the formation of the district may commit these resources.

Summary of Meeting Date & Places and Listing of Committee Members

The committee met on June 10, September 15 and 16, and October 15. The committee meetings were located in Pierre, and the subcommittee meetings were held in Aberdeen, Rapid City, and Sioux Falls.

Committee members were: Representative Hal Wick, Chair; Senator Marguerite Kleven, Vice Chair; Senators Kenneth Albers, Patricia de Hueck, Tom Dempster, H. Paul Dennert, Dave Knudson, Michael LaPointe, and Paul Symens; and Representatives Daryl Christensen, Joni Cutler, Justin Davis, Tom Hackl, Gary Hanson, Dale Hargens, Jim Hundstad, Al Koistinen, Alice McCoy, Keri Weems.

Staff members were: Fred Baatz, Principal Research Analyst; Aaron Olson, Fiscal Analyst; and Teresa Retrum, Senior Legislative Secretary.

RETIREMENT LAWS COMMITTEE

Study Assignment

A continuing study of the pension, annuity, and benefit laws relating to employees and officers in public service.

Summary of Interim

The investment fund is still in very good condition, despite the unfavorable market. Investment Officer Steve Myers reported that the plan had a positive return of 7.12% as of June 16, 2003. At the end of the previous year, SDRS's market value funded ratio was 101% and ranked third out of forty-four in a study of comparable state retirement systems.

The Board discussed possible solutions to those benefits that have a higher than expected cost or those that have potential for abuse. The Board will propose legislation to address the following questions:

- What pay should be included when calculating a member's final average compensation?
- What is an appropriate rate to charge for optional spouse coverage?
- What is an appropriate rate of interest on refunds from the system?
- What is an appropriate rate for the purchase of credited service?
- What should SDRS's policy be regarding members who retire and then are rehired?
- What are the actuarial conditions that would require a report to the Legislature on the financial status of the system?

Long time SDRS administrator Al Asher resigned his position earlier this year. Rob Wylie was appointed as the system's new administrator in August. He first joined the SDRS staff in 1982 and for the past 15 years he has served as the system's finance officer.

Listing of Legislation Adopted

None.

Summary of Meeting Date & Places and Listing of Committee Members

The committee met two times, both jointly with the Board of Trustees of the South Dakota Retirement System, in Pierre at the Ramkota River Centre. The meetings were held on June 18 and December 20, 2003.

Committee members were: Representative Matthew Michels (Chair); Senator Kenneth D. Albers (Vice Chair); Senators William Earley, Clarence Kooistra, Dan Sutton, and Paul Symens and Representatives Burt Elliott, Mel Olson, Tim Rounds, and Lou Sebert.

Staff members were Annie Mehlhaff, Principal Fiscal Analyst, and Kris Schneider, Legislative Secretary.

RULES REVIEW COMMITTEE

Study Assignment

A review of proposed state agency rules.

Summary of Interim

The Rules Review Committee reviewed 93 sets of rules during this interim. The range of subjects covered by the rules this year included routine speed zone modifications for the Department of Transportation to emergency rules to allow reserve law enforcement officers to be paid to fill in for those law enforcement officers called to active duty due to the Iraq conflict. The Department of Agriculture's definition of "State Fair Week" was reviewed and approved at the committee's final meeting on January 12.

The rules from the Department of Game, Fish and Parks to impose certain business requirements on taxidermists were back before the committee. After considerable revisions by the department, the business requirements regarding recordkeeping were accepted as presented.

The committee reviewed two sets of rules that were sent back to a prior step in the rules promulgation process. In each case the committee directed the agency to clarify or reconcile fiscal information used to support the proposed rules. The Plumbing Commission was asked to submit more detailed information to justify the need for certain plumbing installation certificates and inspections. At the September meeting the representatives of the Plumbing Commission presented additional fiscal information to support the proposed rules and the committee accepted the rules as presented. The State Brand Board proposed to increase ownership inspection fees by ten cents. This increase was opposed by the Secretary of the Department of Agriculture and generated extensive public testimony from the Brand Board, the Stockgrowers, and the committee. The committee asked the Brand Board and the Stockgrowers to submit additional fiscal information to justify the fee increase, which the Brand Board did at the October 6 meeting, and the rules were accepted as presented.

Ultimately all rules presented to the committee were accepted.

Listing of Legislation Adopted

1. An Act to change a certain obsolete timeframe used in the rules promulgation process. This bill will amend SDCL 1-26-6(1) to delete a ten day waiting period.
2. An Act to provide additional criteria to send a rule back for further public hearing by the agency.

Summary of Meeting Dates & Places and Listing of Committee Members

The Rules Review Committee met at the State Capitol in Pierre on the following dates: March 24, 2003; April 15, 2003; May 13, 2003; June 10, 2003; September 8, 2003; October 6, 2003; November 14, 2003; December 2, 2003, and January 12, 2004. The last meeting was held to review any rules that needed to be considered before the legislative session began.

Committee members were Senator Royal "Mac" McCracken (Chair); Representative Jean Hunhoff (Vice-Chair); Senators Eric Bogue and H. Paul Dennert; and Representatives Richard Engels and Orville Smidt.

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Legislative Secretary.

SCHOOL DISTRICT EDUCATIONAL EQUALITY AND ORGANIZATION COMMITTEE

Study Assignment

A study of the current organization of the state's school districts and whether that organization is adequately and efficiently providing equal educational opportunity to every child in South Dakota.

Summary of Interim

The committee met three times over five days at the State Capitol in Pierre. Members heard from national experts, local school officials, representatives from state education organizations, and a variety of others. They examined issues including state demographics, sparsity, transportation, data collection, No Child Left Behind, consolidation, educational cooperatives, accreditation, and curriculum requirements.

School reform expert Dr. Gene Bottoms addressed the group. He is Senior Vice President of the Southern Regional Education Board in Atlanta, GA. Dr. Bottoms heads an initiative known as "High Schools That Work." He spoke of the disconnect that often exists between the academic preparation required to graduate from high school and the preparation that is needed to succeed in college, technical school, or the workforce. To overcome that, he suggests strengthening curriculum requirements for high school students and encouraging seniors to take courses that earn them postsecondary academic credit. In his view, students should not have to wait until they reach college or technical school to find out whether they can succeed. He noted that enhanced curriculum requirements must be coupled with additional support for the students who will need extra help to complete them. States and individual school districts need to set measurable goals and work to achieve them. He stressed the importance of directing resources toward programs with a proven track record of helping students succeed.

Stephen Smith, a school finance expert with the National Conference of State Legislatures, opened the first meeting by discussing how policymakers can make decisions based on all the education data that is provided to them. He said data-driven decisions must be based on student performance, how much money is being spent, and what is being purchased with the money spent. In his view, lawmakers must discern which school districts are small by choice and which ones are small by necessity. He also discussed No Child Left Behind, which he said is the most sweeping federal education reform legislation in history. He told the committee of the challenges it brings in terms of the difficulty that some school districts will face in meeting its standards, but he also talked about the possibilities it brings and how all the data generated because of it will help parents and teachers more readily identify students in need.

The committee examined a multitude of statewide data. Dr. Sid Goss from the School of Mines & Technology presented data illustrating the state's demographic trends, and most especially its aging population. He showed that while the state is experiencing modest growth along its east and west borders and on the Reservations, the population base in the middle is dwindling, and there is no evidence that this pattern will change in the foreseeable future.

Ron Woodburn of the state's Bureau of Information Technology led the committee through an

interactive session on utilizing a Geographic Information System (GIS) to analyze school district data. Committee members were able to view much of the information compiled by the Department of Education on each of the school districts in a map format rather than in a more traditional chart or graph. It allowed them to view one piece of information in relation to other information by adding layers to the maps. For example, the committee was able to examine the average ACT score of a school district in relation to the school district's size. The presentation introduced the committee members to a technology that served the committee's needs well and will continue to be an asset to the Legislature in examining school district data. The full Legislature is invited to an education issues forum on December 2, 2003, that will include a demonstration of the capabilities of the GIS in examining school data.

Another tool that will benefit legislators, school administrators and parents is a collaborative effort among the Broad Foundation, Standard & Poor's, and the U.S. Department of Education that will result in the posting of a wide variety of education data on the Internet for the general public. The data will include financial, demographic, school environment, and spending information on school districts. In time, it will also offer a unique return on resources analysis by examining the relationship between student achievement and spending given a district's learning environment, demographics, and finances. Jacque Lane and Bob Durante of Standard & Poor's described the project to committee members via teleconference call.

The committee also spent time examining what constitutes an effective school district. Dr. Tom Hawley, Interim Secretary of the Department of Education, testified that good, effective leaders are a crucial element. Wade Pogany, also from the Department of Education, presented the committee with a list of key principles of effective schools, including clear and specific academic goals and supportive home/school relationships. Dr. Robert T. "Tad" Perry, Executive Director of the SD Board of Regents, highlighted the importance of curriculum offerings in effective school districts and noted that today many students entering state universities are not prepared for college math. Tim Mitchell, Superintendent of the Chamberlain School District, stressed that school districts need to take on the challenge of being more effective and not be afraid of change.

The committee looked at accreditation standards and how they relate to school effectiveness. Melody Schopp with the Department of Education noted that many of the state accreditation standards were repealed by the Legislature in 1995. The standards that remain are not an adequate measure of effectiveness. Don Kirkegaard, the superintendent of the Britton-Hecla school district, informed the group about the North Central Accreditation, Commission on Accreditation and School Improvement. He told them that NCA Accreditation is one way to verify the quality of a school. The accreditation is based on student output, goals, and standards. Mr. Kirkegaard noted that many South Dakota schools are NCA accredited, but some small schools in the state would not likely meet NCA standards because they do not have the necessary qualified staff in place. He added his belief that the state should do more in terms of accreditation. One way to approach that would be to recognize the NCA accreditation as the state accreditation like several other states have done.

Since most of the school districts in the state have declining enrollments and are looking for ways to economize, the committee spent a lot of time learning about educational cooperatives and the services they can provide to school districts. They also heard from superintendents who are sharing services in other ways and from a variety of individuals who have had direct involvement in recent school district consolidations. Committee members were especially interested in uncovering any roadblocks that may prevent school districts from sharing

services or consolidating. Pierre attorney Tom Harmon provided the committee with a history of school district reorganization in South Dakota. He pointed to some of the challenges that school districts have faced when going through the reorganization process. In addition, Patty DeVaney with the SD Attorney General's Office talked to the group about a 1994 lawsuit challenging the state aid to education formula and the Court's decision and interpretation of the formula.

Committee members concluded their work by reviewing what they had learned and targeting some key areas. The need to strengthen curriculum requirements was evident and paramount, particularly in the areas of math and science. They decided to follow Texas's lead and bring forth a proposal establishing a recommended curriculum that would adequately prepare students for their future, and to require most students to follow it. It is their hope that the proposal would begin to bridge the gap that currently exists between what is expected of a child to complete high school and what they need to know to pursue advanced studies or enter the workforce. The committee also decided to put forth a plan that would require all schools to offer the courses necessary for a student to complete to become a Regents' Scholar. In that way, no child will be denied the opportunity to take advanced coursework simply because the school the child happens to attend does not offer it.

Listing of Legislation Adopted

- An Act to allow two or more school districts to include an existing excess tax levy in their consolidation plan.
- An Act to require schools to offer a core curriculum in order to meet state accreditation standards.
- An Act to require the Department of Education to provide for computer access for certain rural attendance centers in South Dakota and to make an appropriation therefor.
- An Act to provide for a basic high school program and a recommended high school program, and to require most students to complete the recommended one.

Summary of Meeting Dates & Places and Listing of Committee Members

On April 14, 2003, the Executive Board of the Legislative Research Council created the Committee on School District Educational Equality and Organization. The following members of the South Dakota Legislature were appointed to the committee: Representative Phyllis Heineman, Chair; Senator John Koskan, Vice Chair; Senators Jay Duenwald, Robert Duxbury, and Frank Kloucek; Representatives Julie Bartling, Jim Bradford, Mike Buckingham, Thomas Deadrick, Joel Dykstra, Burt Elliott, Jeffrey Haverly, Kent Juhnke, Maurice LaRue, Ed McLaughlin, Jim Peterson, Burdette Solum, John Teupel, and Bill Van Gerpen.

The committee met at the State Capitol in Pierre on the following dates: June 23, 2003; August 11-12, 2003; and October 20-21, 2003.

Staff members were Clare Cholik, Senior Research Analyst; Mark Zickrick, Principal Fiscal Analyst; and Rhonda Purkapile, Senior Legislative Secretary.

SOCIAL SERVICES DEPARTMENT AGENCY REVIEW

Study Assignment

An agency review of the Department of Social Services pursuant to HB 1196.

Summary of Interim

The Department of Social Services Agency Review Committee began its study with an overview of the department. At the first meeting the department provided a comprehensive presentation, including handouts that were compiled in a binder. Secretary James Ellenbecker provided an introduction, which was followed by members of his staff providing an overview of the following programs of the department: child care services; energy assistance; adult services and aging; medical services, including Medicaid and the Children's Health Insurance Program; catastrophic county poor relief; economic assistance, including Temporary Assistance to Needy Families and food stamps; electronic benefits transfer; child support enforcement; and child protection services. The following is a brief description of each of these programs:

- **Child Care Services.** In 1990, Congress enacted the Child Care and Development Block Grant in response to the growing demands for child care and work-family issues. This grant provides funds to states for the purpose of improving the quality, availability, accessibility, and affordability of child care. In 1991, the South Dakota Legislature adopted SDCL 28-1-60, which created the Child Care Services Program and authorized its operation within the Department of Social Services. Activities overseen by the Child Care Services Program include: child care licensing and registration; out-of-school child care programs; early childhood enrichment training programs; child care provider development, retention, and availability programs; health and safety grants; and child care assistance.
- **Energy Assistance.** In 1981, Congress enacted the Low-Income Home Energy Assistance Act. This Act provides funds to states that in turn provide financial assistance to low income households in paying home energy costs. In 1981, the South Dakota Legislature adopted SDCL 28-1-46, which established the Low Income Energy Assistance Program and authorized its operation within the Department of Social Services. The program provides financial assistance to low income households to pay their home heating costs and to make their homes more energy efficient. The program also provides emergency assistance to low income households when there is a heating-related crisis. The program is funded entirely by federal dollars.

An additional activity located within the Office of Energy Assistance is the Community Services Block Grant Program. The Community Services Block Grant Act was enacted by Congress in 1981. This program provides grants to private nonprofit organizations designated as community action agencies. These agencies develop programs, supports, and services designed to reduce the causes of poverty in South Dakota communities in order to help low income people move toward self-sufficiency.

- **Adult Services and Aging.** This program, designed to carry out the purposes of the Older Americans Act of 1965, provides a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their

communities and in their homes. Services delivered under the auspices of this program include: congregate meals, home-delivered meals, homemaker services, caregiver support services, transportation services, Rx Access, case management, respite care, assisted living, nursing services, adult day care, adult foster care, information and referral services, legal services, protective services, medication management, assistive devices, health insurance counseling, emergency response systems, and home modifications. For individuals preparing to enter, or currently residing in, nursing facilities, services include pre-admission assessments and ombudsman services.

Additional activities located within this program include the Crime Victim's Compensation Program, which provides payment to victims of violent crimes for crime-related expenses when no other resources are available, and the Domestic Abuse Services Program, which provides funds to communities for women's shelters, law enforcement training, state's attorneys to assist with the prosecution of domestic abuse crimes, and family violence and prevention services.

- **Medical Services.** This program was established to carry out the provisions of Title XIX (Medicaid) and Title XXI (Children's Health Insurance Program). Medicaid is the nation's health insurance program for low-income Americans who meet eligibility requirements. Approximately 31,000 adults currently meet eligibility standards for Medicaid enrollment. Recipients fall into several eligibility aid categories including: SSI recipients (aged, blind, disabled, and nursing home residents who meet financial requirements), members of families eligible for Temporary Assistance for Needy Families (TANF), qualified low income families, low income pregnant women, and women diagnosed with breast or cervical cancer through the Department of Health's All Women Count Program. Approximately 61,621 children are enrolled.

Federal law requires Medicaid to cover inpatient and outpatient hospital services; physician services; medical and surgical dental services; nursing facility services for individuals aged 21 or older; home health care; rural health clinic services; laboratory and x-ray services; nurse-midwife services; early and periodic screening, diagnosis, and treatment (EPSDT) services for individuals under age 21; children's dental services; and durable medical equipment. The State of South Dakota has chosen to cover the following additional services: nursing facility services for the aged in an institution for mental diseases; intermediate care facility services for the mentally retarded; adult optometric services and eyeglasses; prescription drugs; prosthetic devices; adult dental services (non-medical); hospice care; personal care; and breast or cervical cancer services for the Department of Health's All Women Count Program.

Services are not covered unless they are medically necessary. Over-the-counter drugs, home remedies, food supplements, cosmetic surgery going beyond that which is necessary for improved body functioning, and experimental procedures are not covered under the program.

In order to participate in the Medical Services Program, the provider must have a signed provider agreement with the department. Claims must be submitted within 12 months following the month the services were provided. Under certain circumstances, that period can be extended.

Additional programs include a prior authorization program that requires a determination that the service cannot be provided on an outpatient basis at a lesser cost to the department; a managed care program that requires recipients to select a primary care physician who becomes the gatekeeper of the recipient's needed medical services; a surveillance and utilization review program that is responsible for reviewing paid claims history to identify possible abusive or fraudulent billing activities or excessive utilization; a pharmacist intervention program that allows a payment to a pharmacist if the pharmacist intervenes when dispensing prescriptions and, with the physician's approval, substitutes a less costly medication in place of the medication initially prescribed by the physician; and a maximum allowable cost program that establishes a maximum per unit price for multiple source (generic) drugs.

- **Catastrophic County Poor Relief.** This program was created in 1984 and is codified in SDCL chapter 28-13A. The program allows counties to pool funds and use those funds to provide relief to counties faced with paying medical expenses that exceed \$20,000. The pool is administered jointly by the department and a five-member board of county commissioners. The individual on whose behalf the claim is submitted must meet the eligibility criteria for county poor relief as contained in SDCL chapter 28-13. Reimbursement is limited to 90 percent over the first \$20,000. Each year assessments are levied against each of the participating counties to bring the fund level back up to its operating level.
- **Economic Assistance.** Under the umbrella of Economic Assistance are the following programs: Medical Services Eligibility, Temporary Assistance for Needy Families (TANF), Food Stamps, Quality Control, and Auxiliary Placement.

Temporary Assistance to Needy Families (TANF) is a cash assistance program for needy families. The program places emphasis on promoting self-sufficiency by encouraging employment, strengthening families by increasing parental responsibilities, and reducing long-term dependency on the welfare system. The primary focus of South Dakota's TANF Program is to help families with a parent head-of-household move from welfare to work. To help them reach this goal, intensive services are provided through the TANF Work Program. A family may receive TANF benefits but not be a part of the TANF Work Program if the parent has a severe disability or the child's caretaker is a non-parent caretaker relative.

The Food Stamp Program provides assistance to help low-income households obtain a nutritious diet. These households receive benefits that are used like cash at most grocery stores to ensure that they have access to a healthy diet. Food stamp benefits are used to purchase edible food items for the household and seeds and plants to grow food for the household to eat. A household cannot use food stamp benefits to purchase alcohol, tobacco products, nonfood items, vitamins, medicine, food that will be eaten in the store, or hot foods.

The Quality Control Program, which is a federally-mandated program, reviews Food Stamp and Medicaid cases to evaluate the correctness of eligibility decisions and payment accuracy.

The Auxiliary Placement Program is recognized as the responsible school district for children in the custody of the state. This program provides funding for the education

tuition costs at group and residential treatment facilities, including Black Hills Children's Home Society, Sioux Falls Children's Home Society, adjustment training centers, and Children's Care Hospital and School.

- **Electronic Benefits Transfer.** In 1990, Congress amended the Food Stamp Act of 1977 to require the Department of Agriculture to issue regulations establishing electronic benefit transfer (EBT) systems as operational issuance systems to provide food stamp benefits to eligible households. States were required to implement this system before October 1, 2002. South Dakota began implementing its system in May 1992. In 1997, South Dakota expanded its services to include the development of direct deposit or electronic funds transfer as a payment option for recipients and providers in other programs. Currently, six programs utilize direct deposit, including optional state supplement, child care, assisted living, low income energy assistance, and adult services. A contract modification was completed in 1997 to develop and implement an online medical eligibility verification system using debit card technology. Recipients receive a plastic card that must be presented at each medical visit in order to obtain medical care or to the pharmacy to receive prescriptions. This system eliminated the printing and mailing of monthly paper cards and provides accurate, real-time eligibility information that the provider can use for billing.
- **Child Support Enforcement.** In 1975 as a condition of receiving federal funds for the AFDC (now TANF) program, Congress enacted Part D of the Social Security Act that required every state to operate a single and separate child support enforcement program. The Office of Child Support Enforcement (OCSE) is designed to locate noncustodial parents, establish paternity, establish and modify child support obligations, enforce child and medical support obligations, and collect and distribute child support payments. The department is required to provide these services to cases involving TANF, medical only, and Title IV-E foster care and to any other family upon application for services (non-TANF cases). In addition, the OCSE contracts with several state's attorneys and special assistant attorneys general to provide prosecution services involving civil and criminal circuit court actions involving OCSE cases. The prosecutors represent the OCSE in carrying out its responsibilities to provide the required services of paternity and support order establishment and enforcement of support orders. The OCSE partners with various other state and federal agencies to assist in operating an efficient and effective child support enforcement program. Partner agencies include the Unified Judicial System, the Department of Labor, the Department of Public Safety, the Department of Health, the Department of Game, Fish, and Parks, the Department of Revenue and Regulation, the U.S. Department of Justice, the Federal Parent Locate Service, and professional licensing boards and commissions.
- **Child Protection Services.** The Office of Child Protection Services responds to reports of child maltreatment in order to assess the risk of harm and any threat to the safety of a child. Child Protection strives to assure the safety, permanency, and well-being of any child served by the department. The Office of Child Protection Services embraces the following activities: protective services, central registry of child abuse and neglect, foster care services, licensing, adoption services, independent living services, parent education, school social workers, and intensive family services.

Child Protection Services includes a system under which individuals required to report suspected child abuse or neglect (physicians, dentists, doctors of osteopathy, chiropractors, optometrists, mental health professionals or counselors, podiatrists, psychologists, religious healing practitioners, social workers, hospital interns or residents, parole or court services officers, law enforcement officers, teachers, school counselors, school officials, nurses, licensed or registered child welfare providers, employees or volunteers of a domestic abuse shelter, chemical dependency counselors, coroners, or any safety-sensitive position as defined in SDCL 23-3-64) as well as anyone who has reasonable cause to suspect that a person under age 18 has been abused or neglected may make a report to the department. The department provides a series of services to children in need of protection, including intake and screening of referrals of child abuse and neglect involving parents, guardians, or custodians.

The Central Registry of Child Abuse and Neglect is the computerized system that provides for the storage and retrieval of names and information regarding persons who have abused or neglected a child.

Foster care is a protective service that the department makes available to children and families who must be separated because of abuse or neglect. Foster care services include matching a child with an appropriate care provider, the development of a case service plan, the supervision of the child in placement, an ongoing evaluation of needs, the determination of any need for changes, planning in relationship to the child's legal custody status, and movement of the child to a permanent living arrangement. Before a child can be placed into any out-of-home setting, a court of competent jurisdiction must assign the child's care, custody, and control to the department. In most cases, tribal courts retain custody but grant placement and care responsibilities to the department.

The Office of Child Protection Services licenses residential treatment centers, group care centers for minors, family foster homes, child placement agencies, maternity homes, and independent living preparation programs. Licensing is intended to reduce the risk to clients in care outside their own homes by establishing and enforcing regulations that require maintenance of minimum standards of care.

Child Protection Services specializes in recruiting, training, and approving adoptive families for adoption placements and adoptive families for special needs children, as well as linking families to post-adoption services. Child Protection Services offers adoptive families maintenance and medical subsidies to assist the family in providing for the special needs of the adopted child. The type and amount of the subsidy is negotiated by the social worker and the adoptive family but cannot exceed basic foster care rates.

The Independent Living Program is designed to assist youth in the custody of the department transition from foster care to self-sufficiency through multiple services in the areas of employment, education, life skills, housing, health, and youth development opportunities. Child Protection Services has implemented an exit interview form as a survey tool that is given to each youth prior to leaving custody or aging out of the system. This provides the department with an opportunity to identify unmet needs and further access readiness to transition into independent living. The assessment tool is used to determine needs and match those needs with independent living services.

Parent education programs were developed in response to statutory changes which required judges to order parenting education for parents who have abused or neglected their child, have been found guilty of a crime involving domestic violence, or seek protection orders as a result of domestic violence.

The school social worker program promotes healthy families within the school, home, and community by reducing risks and increasing successes for families and children. Social workers are located in 17 elementary schools across the state. These social workers not only work with the children but also work with the families in their homes. Elementary schools are served as a proactive measure.

The Intensive Family Services Program is a multi-departmental effort of various state agencies to provide an opportunity to families whose children are under the jurisdiction of the Department of Corrections to address issues and access needed services. This service enables the Department of Corrections to utilize recommendations from Child Protection Services' social workers as they attempt to locate the most appropriate aftercare placement for youth coming out of residential placements such as boot camp.

The second meeting included a presentation by the Department of Social Services on Medicaid, CHIP (Children's Health Insurance Program), and TANF (Temporary Assistance to Needy Families). The presentation included a breakdown of the medical services programs that are mandatory and those that are optional under federal law, as well as the number of individuals covered under the various programs. The department discussed the TANF caseload, the changes in the TANF program, and the TANF reauthorization legislation that is currently before Congress. The meeting also included public testimony and a tour of the administrative offices of the Department of Social Services located in the Kneip Building.

The committee requested the following additional reports of the department, which were received at the third meeting:

- (1) A report providing statistical information regarding the families leaving TANF; and
- (2) A report containing a list of the different programs administered by the department, the federal/state share of dollars for each program, and the numbers served.

At its conclusion, the committee recommended that the department be continued, having found the department met the burden of establishing sufficient public need is present to justify its continued existence.

Listing of Legislation Adopted

An Act to update and revise certain provisions pertaining to the Department of Social Services.

This Act revises awkward or archaic language; deletes statutes that are no longer used or are inconsistent with current practice; and amends statutes that are gender specific to provide gender-neutral terms.

Summary of Meeting Dates & Places and Listing of Committee Members

The committee met on June 12 and August 11 in the State Capitol in Pierre. The committee also met by teleconference on September 30.

Committee members were: Senator Larry Diedrich, Chair, Representative Don Van Etten, Vice Chair; Senators Jerry Apa, Brock Greenfield, Clarence Kooistra, and Ed Olson; and Representatives Stanford Adelstein, Rebekah Craddock, Larry Frost, Jean Hunhoff, Ted Klaudt, Claire Konold, Kathy Miles, Gordon Pederson, Tim Rave, David Sigdestad, Bill Thompson, and Thomas Van Norman.

Staff members were: Jacquelyn Storm, Principal Legislative Attorney; Sue Cichos, Senior Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

STATE-TRIBAL RELATIONS COMMITTEE

Study Assignment

The State-Tribal Relations Committee selected its study topics for the 2003 Interim at its first meeting. The committee decided to address the issues of education and workforce preparation, economic development and job creation, health care, and child placement and visitation, and receive updates on corrections issues.

Summary of Interim

The State-Tribal Relations Committee is an ongoing committee that was created in statute (SDCL 2-6-20) in 1993 as a part of the state's reconciliation efforts. The committee, which generally does not propose legislation, provides a forum within state government for discussion by Indians and non-Indians of issues affecting the Native American community. The committee also serves as a way of familiarizing legislators with such issues.

The first meeting was held in the Capitol on July 28, 2003, with the primary task of selecting study topics for the 2003 Interim and selecting a committee chair and vice chair. Unlike other interim committees, which are temporary and are established to study particular issues, the State-Tribal Relations Committee is ongoing and selects its own study topics at the beginning of the interim. Committee members, who are appointed for two-year terms, also select their own chair and vice chair, and the committee selected Representative Stanford Adelstein as Chair and Senator Michael LaPointe as Vice Chair for the 2003 and 2004 Interims. As noted above, the committee chose to study education, economic development, health care, and child placement for the 2003 Interim. The committee also heard informational presentations by Mr. Roger Campbell, the new Director of the South Dakota Office of Tribal Government Relations, and by Secretary of Revenue Gary Viken on efforts to establish tax collection agreements with the tribes and the recent court decision regarding fuel taxes in reservation areas.

At the second meeting, which was held in Pierre on September 29-30, 2003, the committee heard presentations and public testimony about education and economic development issues. Dr. Cherie Farlee, Dr. Willard Walters, and Mr. Dan Shroyer, Bureau of Indian Affairs (BIA) Education Line Officers at Cheyenne River, Pine Ridge, and Crow Creek/Lower Brule, respectively, discussed education programs and policies of the Bureau of Indian Affairs and the organization of BIA schools. Dr. Richard Bordeaux, Todd County Superintendent of Schools, discussed the strengths and weaknesses of his school district, which is a public school district located in the Rosebud Reservation. Dr. Wayne Evans, Professor of Education at the University of South Dakota and former president of the South Dakota Indian Education Association, gave his perspectives on Native American Education issues, particularly the need to recognize and resist racism in our society and the need for dialogue. Major Michael Iwen discussed the Junior ROTC program at Pine Ridge. On the second day, Mr. Clint Waara, Community Development Representative for Wells Fargo Bank in Sioux Falls, discussed Wells Fargo programs to stimulate economic growth on Indian reservations, as well as general economic development and housing opportunities for Native Americans. Tribal Chair Michael Jandreau and Economic Development Manager Brian Drapeaux of the Lower Brule Sioux Tribe discussed Lower Brule's economic development efforts. Mr. David Plume, Executive Director of the Oglala Sioux Tribe Empowerment Zone, discussed the empowerment zone concept and the operation of the program at Pine Ridge.

The committee's third meeting was held on November 19-20, 2003, in Lower Brule on the first day and in Pierre on the second day. The November 19 session was devoted to economic development issues and was held in the Tribal Council Chambers of the Lower Brule Sioux Tribe. Mr. Roger Campbell, Director of the Office of Tribal Government Relations, discussed his office's programs and activities and he updated the committee on his work with tribes on tax and education agreements. Mr. Toby Morris of the Governor's Office of Economic Development (GOED) discussed GOED programs that affect tribes and Native American communities. Representatives of the Lower Brule Sioux Tribe, the Yankton Sioux Tribe, the Rosebud Sioux Tribe, and the Cheyenne River Sioux Tribe described economic development efforts and the economic situation for their tribes. Mr. Paul Jurkowski, Director of the Office of Loan Guarantee, Office of Native American Programs of the Denver Regional Office of the Department of Housing and Urban Development, discussed HUD programs dealing with economic development for Native American communities. He described the Section 184 Indian Housing Loan Guarantee Program and the Title VI Loan Guarantee Program and some of the strengths and weaknesses of those programs as well as his insights into economic development issues affecting Native Americans. Ms. Nancy Gilbertson, South Dakota State Director for the Small Business Administration, discussed her agency's programs that affect Native Americans.

The November 20 session was held in the Capitol in Pierre and included presentations and testimony on Native American child placement, health care issues, and corrections. Secretary James Ellenbecker and Ms. Virgena Wieseler, Administrator of Child Protection Services of the Department of Social Services, explained department policy and procedures related to child placement and adoption as it relates to Native American children and to placement of children with relatives. Two Indian Health Service hospital administrators, Mr. Vernon Donnell, Pine Ridge, and Mr. Dale Young, Rosebud, discussed the organization of the Indian Health Service and the functioning of IHS facilities, as well as the situation at their respective facilities. Dr. Jeffrey Henderson, Rapid City, President of the Black Hills Center for American Indian Health, described a number of research efforts that his organization has undertaken, and he provided his perspectives on Native American health issues. The Department of Corrections updated the committee on changes that have been made in corrections practices in the past year related to Native Americans, some in response to issues raised by the State-Tribal Relations Committee and the Interim Corrections Review Committee. Secretary Tim Reisch and Wardens Bob Dooley and Duane Russell represented the department. The committee also heard a short presentation by Ms. Dar Baum of the South Dakota Housing Development Authority in response to questions that had arisen the previous day at the Lower Brule session on economic development.

Listing of Legislation Adopted

None.

Summary of Meeting Dates & Places and Listing of Committee Members

The committee met in the State Capitol in Pierre on July 28, September 29-30, and November 19-20, 2003.

Members of the committee include Representative Stanford Adelstein (Chair) and Senator Michael LaPointe (Vice Chair); Senators Patricia de Hueck, Brock Greenfield, Gil Koetzle, and

Sam Nachtigal; and Representatives Jim Bradford, Kent Juhnke, J.E. "Jim" Putnam, and Thomas Van Norman.

Committee staff members were Tom Magedanz, Principal Research Analyst; and Teri Retrum, Senior Legislative Secretary.